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No. 273

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, MEMPHIS UNION STATION COMPANY, and UNION PACIFIC RAILWAY, *Petitioners,*

v.

INTERSTATE COMMERCE COMMISSION, CITY OF MEMPHIS, TENNESSEE, and RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION IN OPPOSITION

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OPINIONS BELOW

The District Court's opinion is reported at 230 F. Supp. 456, and reproduced in Appendix B at pages 7a-25a to the petition. The final judgment of the District Court is reproduced in Appendix C at pages 29a-35a to the petition.

The opinion of the United States Court of Appeals for the Sixth Circuit set forth in Appendix D to the petition, pages 36a-50a, is unreported.

JURISDICTION

The judgments of the court below were entered on March 31, 1966 (Pet. 51a-55a). The petition for a writ of certiorari was filed June 21, 1966. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Was the trackage of the Memphis Union Station, operations over which were abandoned by petitioners in 1964, a "line of railroad" within the meaning of Section 1(18) so as to require approval of the Interstate Commerce Commission prior to abandonment?

2. Where at least one of the petitioners commenced operations over the trackage of another railroad in order to operate to and from alternate facilities, would such operation require Commission approval under Sections 5(2) and 5(4)?

The District Court which heard this case answered both of these questions in the affirmative, and the court below, on appeal, affirmed its judgment.

STATUTES INVOLVED

The relevant provisions of the Interstate Commerce Act, 49 U.S.C., Sections 1(18)-(20) and (22), and 49 U.S.C., Sections 5(2), (4) and (8), are set out at pages 1a-6a in Appendix A to the petition.

STATEMENT

Petitioners' statement of the facts of the case, as set forth at pages 3-9 of the petition, is substantially correct with the addition of the following statement (App. 178a):[1]

> "Shortly after the termination of operations at Union Station, 120 of its employees were discharged, of whom about 75 have not obtained other employment. It is in behalf of these discharged employees that the Labor Association [RLEA] has intervened." (Pet. 11a)

Thus, it is shown that the Memphis Union Station, a common carrier by railroad (Pet. 14a), prior to April 1, 1964, operated as a passenger terminal in that city and is owned by the petitioners Southern Railway Company (Southern), Missouri Pacific Railroad Company (MoPac), Louisville and Nashville Railroad Company (L&N), and St. Louis-Southwestern Railway Company (Cotton Belt); that the Southern, MoPac, and the L&N abandoned operations over trackage constituting part of the terminal properties of Memphis Union Station used in the performance of interstate transportation of passengers; that upon such abandonment the Southern began using and operating over trackage to a building some 1.8 miles from Memphis Union Station, which had last been used as a passenger terminal for the Southern over 50 years ago (App. 177a); that MoPac began use of and operating over tracks of its subsidiary Union Railway Company

[1] In similar fashion to petitioners, references herein to "App." are to the "Joint Appendix of Defendants-Appellants" in the Court of Appeals, a copy of which is included in the certified copy of the record filed herein.

to a building which, likewise, had not been used as a passenger terminal for over 50 years (App. 177a); that L&N began operation over tracks within terminal facilities of and owned by the Illinois Central Railroad (IC); and that all operations of the tracks and terminal facilities of the Memphis Union Station were thus abandoned by Memphis Union Station and its tenant railroads.

ARGUMENT

The petition fails to present a substantial question requiring review by this Court. Whereas petitioners claim that the ruling of the lower court conflicts with settled law, is contrary to the intent of Congress in the enactment of the sections of the Interstate Commerce Act (Act) involved, and is opposed to the settled administrative construction of those sections of the Act, the judicial and administrative references upon which petitioners rely to support such contentions fail to show that the lower court erred in its decision on the issues presented, or that there is need for this Court's review of judgments entered.

Relying primarily on strained semantics, petitioners attempt to persuade this Court, as they failed to persuade the court below, that the statutory authority of the Commission over abandonments of the operation of "lines of railroad" by interstate railroads is restricted to railroad trackage which petitioners would describe as "main line" or "through" trackage whether or not such trackage is located in passenger stations or terminal areas operated in interstate service by railroads. Thus, petitioners urge that only where it is shown that a railroad station, depot or terminal is situated "side-saddle", or "astride", track-

age used for loading and unloading of passengers *and* for the "through" transportation of passengers, and there is an attempted abandonment of such trackage, can there be an abandonment of "a line of railroad" sufficient to require the prior authority of the Interstate Commerce Commission[2] (Commission). Petitioners contend thus that all other terminal trackage is within the exemptions of Section 1(22) of the Act and properly characterized as "spur, industrial, team, switching, or side tracks", and not therefore a "line of railroad".

Interwoven in their arguments are references to passenger train service curtailments governed by Section 13a of the Act and irrelevant to the issues presented here. Substantial reliance is placed by petitioners upon their own interpretation of the decision of this Court in *Railroad Commission* v. *Southern Pacific Co.*, 264 U.S. 331.

The opinion of the Court of Appeals clearly shows that it fully considered the above contentions pressed by petitioners and found them unpersuasive so as to permit of a decision by that court that interstate carriers by railroad could undertake by themselves the determination of how and by what means the public convenience and necessity should be served in the transportation of passengers into, through, and from

[2] Even petitioner's resort to "physical" characteristics of passenger terminals and trackage therein as definitive of the scope of application of Section 1(18) of the Act, does not serve to remove trackage within Memphis Union Station from what it concedes to be the scope of Commission authority because as shown by the description of the trackage involved and train operations thereon set forth in the opinion of the District Court (Pet. 8a-9a), through passenger trains do move "through" Memphis Union Station on the "Y" leads and terminal tracks.

large metropolitan areas such as Memphis, Tennessee. The court found that it was clear that the trackage involved was "trackage on which interstate passenger service has both originated and terminated since 1912"; that "No passenger seeking to leave Memphis for another state, or seeking to come to Memphis from another state by any of the railroads operating therefrom during all of that period [since 1912] could do so without traveling over some of the trackage of the Memphis Union Station"; that the "now abandoned operations were an integral part of uninterrupted transportation of interstate passengers" (Pet. 44a); and that it believed that it is "the use of these tracks as an integral part of railroad systems developed to accommodate interstate commerce which determines that they constitute 'a line of railroad' within the meaning of Section 1(18)" (Pet. 45a-46a).

The court below found unconvincing petitioners' contentions advanced there as here that the legislative history of Section 1(18) of the Act supported their claim that terminal trackage other than that falling within petitioners' own restricted category of "main" or "through" trackage is exempted from the classification of a "line of railroad". The lower court noted that although "terminal tracks" was a term used in Congressional debates relating to Section 1(18), these words were not included in the exemption clause, even though they were included by Congress in other sections of the Act (Pet. 47a, and note 3).

Significantly, and contrary to the views urged by petitioners, the lower court found that the weight of administrative interpretation by the Commission of the statute involved was plainly in support of the view that trackage, independent of nomenclature given it

by its owners, *used* as the sole means of transportation of interstate passengers, could not properly be characterized as "spur" or "switching" trackage; that repeatedly during the history of the operation of Memphis Union Station the Commission had exercised jurisdiction over the operation of its trackage—including agreements between the tenant railroads for operations over such trackage; that similar interpretations have been made repeatedly by the Commission pertaining to terminal trackage at other union terminals; and that the consistent administrative interpretation by the Commission of the sections of the Act involved is entitled to great weight (Pet. 45a).

The opinions below clearly show that the decisions they support are in accord with substantial judicial precedents, and permit of the final resolution of this controversy. *Jay Street Connecting Railroad, et al.* v. *Meyers, et al.*, 289 F. 2d 356 (2nd Cir.), *cert. den.* 368 U.S. 828; *Meyers, et al.* v. *Famous Realty, Inc., et al.*, 271 F. 2d 811 (2nd Cir.), *cert. den.* 362 U.S. 910; *Meyers* v. *Jay Street Connecting Railroad,* 262 F. 2d 676, 678 (2nd Cir.). Insofar as the rulings require the Commission to inquire into the merits of the abandonments and use of alternate trackage in the light of public convenience and necessity and the public interest, they are in accord with decisions of this Court, *Thompson* v. *Texas Mexican R. Co.,* 328 U.S. 134; *Smith* v. *Hoboken R. Co.,* 328 U.S. 123; *United States* v. *Idaho,* 298 U.S. 105; *Transit Commission* v. *United States,* 289 U.S. 121; *Piedmont, Etc., Ry. Co.* v. *I.C.C.,* 286 U.S. 299; *Texas & Pacific Ry. Co.* v. *Gulf Ry. Co.,* 270 U.S. 266, and the *Southern Pacific* case, *supra* (Pet. 48a-49a), relied upon by petitioners, as they are in accord with the decisions of the Commission, *Boston*

Terminal Co. Reorganization, 312 I.C.C. 373; *Construction by Cincinnati Union Terminal Co.,* 138 I.C.C. 297.

It is clearly evident that the interests of the general public utilizing the facilities of Memphis Union Station for passenger service rendered by its tenant lines would be affected, and the decision as to what service should be performed should not be left to the discretion of private parties to serve solely their own interests.

The operation begun without authority of the Commission by the L&N over trackage of and within the terminal of the IC—such trackage being impressed with the same use and public interest as trackage within Memphis Union Station—clearly was for the reasons set forth above, an operation by L&N over a "line of railroad" of another railroad which required the prior approval of the Commission under Sections 5(2)(a) and 5(4) of the Act.

Necessarily embodied in the statutory framework for Commission protection of the public interest is the interest of the railway employees who have been summarily dismissed (Pet. 11a), and denied the benefits customarily granted to such employees adversely affected in their employment as a result of abandonments or changes in the use and ownership of railway lines. *BMWE* v. *United States,* 366 U.S. 169, 177. The Commission, as a matter of law, 49 U.S.C. 5(2)(f), as concerns proceedings arising under Section 5(2) of the Act, and as an exercise of its administrative discretion as to abandonments under Section 1(18), has required that protection be afforded railway employees adversely affected in their employment as a result of the transactions it authorizes under Sections 1(18)

and 5(2) of the Act. *Seaboard A. L. R. Co. Control*, 312 I.C.C. 803, modified 216 F. Supp. 101; *Seaboard A. L. R. Co. Trackage Rights*, 312 I.C.C. 797; *Gulf, M. & O. R. Co. Abandonment*, 282 I.C.C. 311. As expressly found by this Court in *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U.S. 373, 378, the imposition of protective conditions for railway employees displaced as a result of transactions of the type here involved is necessarily consistent with public convenience and necessity in that they will strengthen the national transportation system "through their effect on the morale and stability of railway workers generally".

Respectfully submitted,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATE COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE RESPONDENT CITY OF MEMPHIS, TENNESSEE, IN OPPOSITION.

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